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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,928	08/07/2001	Eddie M. Schwalb	10237.7	4537
21999	7590	04/19/2006	EXAMINER	
KIRTON AND MCCONKIE			VAN HANDEL, MICHAEL P	
1800 EAGLE GATE TOWER				
60 EAST SOUTH TEMPLE			ART UNIT	PAPER NUMBER
P O BOX 45120			2623	
SALT LAKE CITY, UT 84145-0120				
				DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/923,928	SCHWALB, EDDIE M.
	Examiner	Art Unit
	Michael Van Handel	2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 06 February 2006.
- 2a) This action is **FINAL**.                                   2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-5,8-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5, 8-17, 19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. This action is responsive to an Amendment filed 2/06/2006. Claims **1-5, 8-17, 19** are pending. Claims **1, 4, 5, 8-17, 19** are amended. Claims **6, 7, 18, 20-28** have been cancelled. The examiner hereby withdraws the objections to claims **1, 22-28** in light of the amendment.

### *Response to Arguments*

1. Applicant's arguments filed 2/06/2006 with respect to claim **11** have been considered but are moot in view of the new ground(s) of rejection.
2. Applicant's arguments filed 2/06/2006 with respect to claims **1-5, 8-10, 12-17, 19** have been fully considered but they are not persuasive.

Regarding claims **1, 9, 15**, the applicant argues that Rhoades does not teach every aspect of the amended claims. Specifically, the applicant argues that Rhoades does not teach the local service as claimed in the present invention. The examiner respectfully disagrees. Rhoades discloses broadcasting menu information programming to all cable subscribers (col. 5, l. 9-12). This meets the limitation “receiving a programming broadcast from a remote service provider.” Rhoades also discloses that only those subscribers requesting a software program can receive, store, decode and use the requested software programs (col. 5, l. 12-18, 60-65). The examiner notes that these programs are stored and decoded before being used by the subscriber, thus meeting the limitation “locally enhancing the programming broadcast with a local service that

provides at least one of (i) content and (ii) functionality to the programming broadcast.” Rhoades further discloses checking if a selected information service is already resident in the home computing element, and if it is, the information service software program is not transmitted (col. 3, l. 2-8). This meets the limitation “wherein said local service bypasses said remote service provider.” Rhoades further discloses establishing a telephone link between the subscriber and the remote information services storage center for billing and authorization for use before the information service may be used (col. 3, l. 34-38). The examiner notes that this telephone link connects the subscriber to the information services storage center, thereby bypassing the cable TV head end (see Fig. 1). This meets the limitation “transmitting a request to a remote billing server for use of said local service, wherein said request bypasses said remote service provider.” Rhoades further discloses providing a menu and a software program for display on a television receiver (col. 5, l. 12-24). This meets the limitation “providing the remote programming broadcast and the local service for rendering on a local television display. Thus, the examiner maintains that Rhoades anticipates the limitations of the claimed invention.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 8, 9, 12-15, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Rhoades.

Referring to claims 1, 9, 15, and 19, Rhoades discloses a software appliance apparatus/method (home computing assembly 10) for locally enhancing a remote programming broadcast, comprising:

- a central processing unit 30 (Fig. 3);
- a receiver coupled to said central processing unit for receiving said programming broadcast from a remote service provider 92 (col. 6, l. 63-67 & Fig. 1) ;
- a local memory device electrically coupled to said central processing unit 32 (RAM);
- a data structure contained and stored on said memory device (col. 6, l. 22-25), said data structure configured to locally enhance said programming broadcast with a local service (the examiner notes that the subscriber requests a selected information service from the remote information services storage center (thereby bypassing the cable TV head end), and if the service is already resident in the home computing element (i.e. local to the home computing element) the information service software program is not transmitted)(col. 2, l. 44-68 & col. 3, l. 1-9) that provides at least one of (i) content and (ii) functionality to said programming broadcast, wherein said local service bypasses said remote service provider (the information service resident on in the home computing element is authorized and the service is not transmitted)(col. 3, l. 2-9);
- a connection coupled to said central processing unit to provide said remote programming broadcast and said local service for rendering on a local television display (col. 7, l. 20-25); and

- a monitoring and billing module 60, coupled to the memory device, to monitor activity of said local service and to bill a recipient based on the activity monitored (col. 3, l. 28-45 & Fig. 1).

Note: The USPTO considers the applicant's "at least one of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

Referring to claims **4** and **12**, Rhoades discloses the software appliance apparatus/method according to claims 1 and 9, respectively, further comprising a reader, coupled to the central processing unit, to read content on said local memory device and to transmit it as at least part of said local service (col. 6, l. 5-9 & Fig. 2).

Referring to claim **8**, Rhoades discloses the software appliance apparatus according to claim 1, wherein said software application apparatus is configured to reside within a set top box (the examiner notes that home computing unit 10 receives incoming broadcast channels, converts them to NTSC compatible signals, and outputs them to a television receiver, thereby meeting the definition of a set top box)(col. 6, l. 63-67; col. 7, l. 25, & Fig. 3).

Referring to claims **13** and **14**, Rhoades discloses the method according to claim 9, further comprising the step of remotely monitoring usage of the local service (the examiner notes that every time the subscriber restarts the information service, a telephone link is established with the remote information services storage center for billing and authorization for use before the information service can be used, and that the remote information services storage center further maintains an activity log for each subscriber)(col. 3, l. 29-45).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 10, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoades in view of Brotz et al.

Referring to claims 2, 10, and 16, Rhoades discloses the software appliance apparatus/method according to claims 1, 9, and 15, respectively. Rhoades does not disclose that the apparatus operates within a Digital TV Application Software Environment (DASE). Brotz et al. discloses digital television system in which the DASE signal format can be used (p. 3, paragraph 25). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Rhoades to include the ability to use the DASE signal format, such as that taught by Brotz et al. in order to provide a system that can take advantage of the enhanced ability to access and display digital information within a television system for displaying and accessing HTML documents (p. 1, paragraph 7).

5. Claims 3, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoades in view of Connolly.

Referring to claims 3 and 17, Rhoades discloses the software application apparatus of claims 1 and 15, respectively. Rhoades does not disclose that the data structure is Program and System Information Protocol (“PSIP”) compatible. Connolly discloses receiving data in PSIP

format (p. 2, paragraph 11). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Rhoades to include the ability to receive data in PSIP format such as that taught by Connelly in order to help a user locate broadcasted channels.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoades in view of Shen et al.

Referring to claim 5, Rhoades discloses the software appliance apparatus according to claim 1. Rhoades does not disclose that the software appliance further comprises a connector configured to receive a personal digital assistant (PDA) or a computer device. Shen et al. discloses a computer that downloads television program schedule information and transports the information to a PDA through a connection between the PDA 210 and the desktop computer 202. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Rhoades to include a connection between computer and PDA software programs such as that taught by Shen et al. in order to simplify the use of program schedule information through a remote control (col. 1, l. 46-48).

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoades in view of Connelly and further in view of Pekowsky et al.

Referring to claim 11, Rhoades discloses the method according to claim 9. Rhoades does not disclose that the data structure is PSIP compatible. Connelly discloses receiving and storing data in PSIP format (p. 2, paragraph 11). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Rhoades to include the ability to receive

data in PSIP format, such as that taught by Connelly in order to help a user locate broadcasted channels. The combination of Rhoades and Connelly does not disclose collecting Digital Storage Media Command and Control (DSMCC) data from a programming broadcast into a local Program and System Information Protocol (“PSIP”) database. Pekowsky et al. discloses playing out PSI and SI information in the form of an EPG, so as to convey the names and descriptions of DSMCC data carousel applications to a user (p. 834, col. 2, l. 11 & p. 835, col. 1, l. 13-18). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the locally stored PSIP data of Connelly in the combination of Rhoades and Connelly to include storing DSMCC data carousel application data for representation to a user, such as that taught by Pekowsky et al. in order to inform a user of existing interactive applications.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Brooks et al. discloses methods and terminal device structures for dynamically programming a digital audio/video entertainment terminal.

Addington et al. discloses a broadcast file system for delivering data from a plurality of servers to a client.

Metz et al. discloses downloading applications software through a broadcast channel.

Zigmond et al. discloses receiving an information resource from the Internet if it is not received from a broadcast channel.

Jerding discloses a terminal that facilitates efficient, flexible and user-friendly navigation of a plurality of program services provided by an associated television network.

Kim discloses a method of managing contents data for digital broadcasting by using an application definition file and a management system.

Corl discloses a meta data structure that provides data and/or a link to such data that is used by an EPG generator in a DTV receiver to display visually-compelling information about an event.

Brown discloses an interactive integrated application, having a broadcast portion and an on-demand portion.

Dougherty et al. discloses using an electronic program guide to synchronize interactivity with broadcast programs.

Townsend et al. discloses a receiver for television signals that is arranged to receive video signals comprising video data and information data.

Allibhoy et al. discloses the automatic execution of an application on an interactive television.

Picco et al. disclose a system and method for inserting local content into programming content.

Tam discloses an interactive video entertainment distribution network utilizing a subscriber information maintenance system.

Kim discloses a virtual channel table for a broadcast protocol and method of broadcasting and receiving broadcast signals using the same.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Van Handel whose telephone number is 571.272.5968. The examiner can normally be reached on Monday-Friday, 8:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571.272.7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

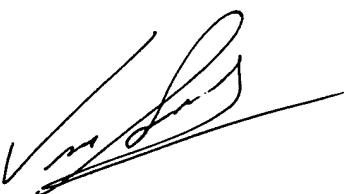
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Note to Applicant**

Art Units 2611, 2614 and 2617 have changed to 2623. Please make all future correspondence indicate the new designation 2623.

Michael Van Handel  
Examiner  
Art Unit 2623

MVH



VIVEK SRIVASTAVA  
PRIMARY EXAMINER